

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

|                       |   |                            |
|-----------------------|---|----------------------------|
| RUSSELL DEAN WILBURN, | : |                            |
|                       | : | NO. 1:02-CV-00860          |
| Petitioner,           | : |                            |
|                       | : |                            |
|                       | : | <b>OPINION &amp; ORDER</b> |
| v.                    | : |                            |
|                       | : |                            |
|                       | : |                            |
| MARK HOUK,            | : |                            |
|                       | : |                            |
| Respondent.           | : |                            |

On November 19, 2002, the Court received Petitioner Russell Dean Wilburn's (hereinafter "Wilburn") petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 (doc. 1). Respondent Mark Houk filed a return of writ on January 17, 2003 (doc. 3), and the Court received Wilburn's traverse on February 21, 2003 (doc. 6). Ultimately, the assigned Magistrate Judge issued a Report and Recommendation on April 13, 2005, recommending that the petition be dismissed, that no certificate of appealability should issue, and that the Court should deny Wilburn leave to proceed in forma pauperis on appeal (doc. 5).

Wilburn was served with the Report and Recommendation and was therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C. § 636(b)(1)(C), including that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th

Cir. 1981). Wilburn has failed to file any objections thereto within the ten days provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C). Pursuant to 28 U.S.C. §636(b), the Court has reviewed the Report and Recommendation de novo, finding it both thoughtful and proper.

Having reviewed that Magistrate Judge's Report and Recommendation, the Court finds it to be well-reasoned and thorough. Accordingly, the Magistrate Judge's Report and Recommendation (doc. 8) is hereby ADOPTED IN ITS ENTIRETY. Wilburn's Petition for Writ of Habeas Corpus (doc. 1) is DISMISSED WITH PREJUDICE. Issuance of a certificate of appealability of this Order pursuant to 28 U.S.C. § 2253(c) is DENIED. The Court hereby CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order may not be taken in good faith; leave to proceed in forma pauperis on appeal is therefore DENIED.

SO ORDERED.

Dated: May 5, 2005

s/S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge